

**DETAILED ACTION**

Claims 1 – 14 are pending.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1 – 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Nozaki et al., (Nozaki), US Patent Publication 2002/0036800 A1.**

Regarding claim 1, Nozaki discloses:

*A contents supplying server apparatus that supplies contents for downloading via a communication network; and an information processing terminal that receives the contents from the server apparatus for at least one user (fig. 2:1, 2a)*

*Wherein the server apparatus comprises: a server storing device for storing, together with numerous contents, user information for each user, including user ID information and contents purchase information comprising contents ID information and copy control data (fig. 3:8 - herein Nozaki discloses a server storing device);*

1           *and a server controlling section that, in response to a copy permission request*  
2           *from a user for copying the downloaded contents from said information processing*  
3           *terminal to an external apparatus or recording medium (par. 14, 21, 103), reads out the*  
4           *copy control data of the requested downloaded contents to be copied to the external*  
5           *apparatus or recording medium from the server storing device, supplies the copy control*  
6           *data of the user to said information processing terminal, and amends the copy control*  
7           *data of the user corresponding to a request stored in the server storing device (par. 62,*  
8           *63, 105-107, 113),*

9           *and wherein the information processing terminal comprises: a terminal storing*  
10           *device for storing the downloaded contents from the server apparatus (fig. 4:21);*

11           *a sending section for sending to the server apparatus a copy permission request*  
12           *(par. 77; fig. 4:36, 28) for copying the downloaded contents to the external apparatus or*  
13           *recording medium each time before the downloaded contents are to be copied to any*  
14           *external apparatus or recording medium (par. 100, 113, 141; fig. 1). Herein, the*  
15           examiner notes that the prior art anticipates the recited structure of a “sending section”  
16           of the claimed apparatus. However, for the applicant's benefit, the examiner notes that  
17           Nozaki anticipates such intended use recitation. Regarding the applicant's description  
18           of an intended use for the “sending section”, the examiner notes that Nozaki discloses a  
19           “sending section” that can be used to make a “copy permission” request each time a  
20           copy is to be made. Note, that Nozaki allows copyright holders or distribution servers to  
21           limit the copy count at their discretion, such that a user would be required to request a

1 reuse information key before making a copy (par. 100, 113, 141; fig. 1; see also par.  
2 146).

3 *a receiving section for receiving the copy control data of the downloaded*  
4 *contents to be copied to the external apparatus or recording medium from the server*  
5 *apparatus (par. 78; fig. 4:30, 28);*

6 *and a terminal controlling section for determining whether or not to copy said*  
7 *downloaded contents to the external apparatus or recording medium based on the*  
8 *received copy control data (fig. 4:35; par. 76).*

9  
10 Regarding claim 2, Nozaki discloses:

11 *wherein the copy control data stored in said server storing device represents the*  
12 *number of times the downloaded contents are allowed to be copied to the external*  
13 *apparatus or recording medium, and is decremented every time the downloaded*  
14 *contents are copied from the information processing terminal into the external apparatus*  
15 *or recording medium (par. 63, 73, 80).*

16  
17 Regarding claim 3, Nozaki discloses:

18 *wherein the user information of said server storing device further includes*  
19 *terminal ID information representing one or more information processing terminals*  
20 *belonging to one user (par. 89, 101; fig. 2: 2a, 2b, 3, 5, 6),*

21 *and said server controlling section supplies the already downloaded contents by*  
22 *the one user without executing a fee-charging process to the information processing*

1 *terminal that has already downloaded the downloaded contents or to another*  
2 *information processing terminal belonging to the one user* (par. 12-17 – Nozaki does not  
3 disclose executing a fee charging process for an owner's previously owned contents).

4  
5       Regarding claim 4, Nozaki discloses:  
6       *wherein said server storing device stores an initial value of the copy control data,*  
7 *contents by contents* (par. 63).

8  
9       Regarding claim 5, Nozaki discloses:  
10       *wherein said contents are music data* (par. 28).

11  
12       Regarding claims 6 – 11, they are program and apparatus claims corresponding  
13 to claims 1 – 5, and they are rejected, at least, for the same reasons.

14  
15       Regarding claims 12 – 14, they recite wherein the external apparatus is an  
16 electronic musical instrument, however, the examiner notes that "the external  
17 apparatus" is not a required limitation of the claims. Therefore, though Nozaki discloses  
18 an apparatus capable of reproducing musical notes or sounds (par. 44), it is not  
19 necessary to address this recitation.

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**Response to Arguments**

Applicant's arguments filed 7/1/09 have been fully considered but they are not persuasive.

Applicant argues essentially that:

(i) *Applicant disagrees with the examiner's assessment because (1) sending a copy permission request each time before the downloaded contents are to be copied to any external apparatus or recording medium defines what the sending section does, and thus is structural, and (2) sending feature in claim 9 is part of a computer program instruction rather than structure. Either way, it is a legal error for the examiner to conveniently dismiss the characteristic/operational limitation of a claimed element as an intended use.*

...

*Applicant submits that it is improper as a matter of law for the examiner to interpret a claim limitation by ignoring the functional limitation of the claimed sending unit. (Remarks, 7/1/09, pg. 5, 6)*

1           In response, the examiner respectfully notes that the applicant's arguments  
2 essentially amount to a restatement of the applicant's prior stated position: *Nozaki*  
3 *simply does not seek any permission from the server before each time a copy is to be*  
4 *made to any external apparatus or recording medium. At least in this respect, the*  
5 *pending claims clearly distinguish over Nozaki.* (Remarks, 1/24/09, pg. 6). The  
6 examiner notes that the applicant's arguments are found to be unpersuasive for the  
7 reasons of record.

8           Furthermore, with reference to the applicant's present remarks, the examiner  
9 respectfully notes that the applicant is mistaken. Particularly, it is noted that the  
10 rejection does not conveniently dismiss or ignore the claimed features. The rejection  
11 explicitly addressed for the applicant's benefit the manner by which the functional  
12 recitations are anticipated by the prior art (e.g. see Non-final Action, 4/1/09, pg. 5, lines  
13 6-13). The applicant, however, neglects to address and counter this rejection with  
14 evidence or a showing of how the prior art does not anticipate the functional recitations.  
15 For this reason, at least, the examiner notes that the applicant's arguments are  
16 unpersuasive.

17  
18           It is additionally noted, that the applicant protests the examiner's position that the  
19 features are recited as the intended use of the claimed apparatus and the claimed  
20 medium storing a program with the allegation that "*1) sending a copy permission*  
21 *request each time before the downloaded contents are to be copied to any external*  
22 *apparatus or recording medium defines what the sending section does, and thus is*

1 *structural, and (2) sending feature in claim 9 is part of a computer program instruction*  
2 *rather than structure” (Remarks, pg. 7/1/09, pg. 5, lines 6-13).*

3 In response, the examiner respectfully points out that the actual language of the  
4 claim recitations in question, “...**for sending to the server apparatus a copy permission**  
5 **request for copying the downloaded contents to...**” [claim 1, 6], “...**for: ... sending to**  
6 **the server apparatus a copy permission request for copying the downloaded contents**  
7 **to...**” [claim 9] are clearly and explicitly recited using the language of intended use.

8 Thus, contrary to Applicant’s allegation (*it is a legal error for the examiner to*  
9 *conveniently dismiss the characteristic/operational limitation of a claimed element as an*  
10 *intended use*), the examiner notes that the recitations were indeed correctly identified as  
11 intended use recitations. Furthermore, it is noted that the applicant’s remark (w.r.t.  
12 claims 1, 6) that a recitation of function defines a structure is unsupported by evidence  
13 or rationale and is therefore noted to be a mere allegation in the absence of any reason  
14 to find persuasive. Furthermore, it is noted that the applicant’s apparent suggestion  
15 (w.r.t. claim 9) that a recitation of function identifies any particular coded instruction is  
16 unsupported by evidence or rationale and is therefore noted to be a mere allegation in  
17 the absence of any reason to find persuasive.

### 18 19 **Conclusion**

20  
21 The prior art made of record and not relied upon is considered pertinent to  
22 applicant's disclosure:

1           ***See Notice of References Cited.***

2  
3           **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time  
4 policy as set forth in 37 CFR 1.136(a).

5           A shortened statutory period for reply to this final action is set to expire THREE  
6 MONTHS from the mailing date of this action. In the event a first reply is filed within  
7 TWO MONTHS of the mailing date of this final action and the advisory action is not  
8 mailed until after the end of the THREE-MONTH shortened statutory period, then the  
9 shortened statutory period will expire on the date the advisory action is mailed, and any  
10 extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of  
11 the advisory action. In no event, however, will the statutory period for reply expire later  
12 than SIX MONTHS from the mailing date of this final action.

13           Any inquiry concerning this communication or earlier communications from the  
14 examiner should be directed to JEFFERY WILLIAMS whose telephone number is  
15 (571)272-7965. The examiner can normally be reached on 8:30-5:00.

16           If attempts to reach the examiner by telephone are unsuccessful, the examiner's  
17 supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone  
18 number for the organization where this application or proceeding is assigned is 571-  
19 273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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